

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROBERT SWIGER,

Plaintiff,

08cv1387

ELECTRONICALLY FILED

v.

THE HARTFORD

Defendant.

ORDER OF COURT

Although *Metropolitan Life Ins. Co. v. Glenn*, U.S. , 128 S.Ct. 2343 (2008), has substantially altered the standard of judicial review of an administrator's decision to deny ERISA Plan disability benefits,¹ structural and procedural factors bearing on potential conflicts of interest may still inform a Court's decision in its judicial review for abuse of discretion under an arbitrary and capricious standard. However, particular procedural irregularities would be gleaned solely from the administrative record, as defendant correctly notes. See e.g., *Mitchell v. Eastman Kodak Co.*, 113 F.3d 433, 440 (3d Cir. 1997).

While some discovery might, theoretically, be appropriate in a given case to determine whether any structural conflicts exist (and the Court expresses no position on this issue), the Court agrees with defendant in this case that with the exception of the "financial status of the administrator," all of the potential structural and procedural factors are to be found in the existing record. As to the financial status of the administrator, the Court agrees that this information is

¹ It would seem that the sliding scale -- heightened standard of review endorsed in the Third Circuit, see *Pinto v. Reliance Std. Life Ins. Co.*, 214 F.3d 377 (3d Cir. 2000) has been supplanted by the Supreme Court's ruling in the *Glenn* case, in which structural conflicts are but one factor to consider under the traditional arbitrary and capricious standard of review.

publicly available, and therefore, additional discovery and depositions are not necessary to obtain this information.

Accordingly, Plaintiff's Motion for Leave to Take a 30(B)(6) Deposition (doc. no. 23) is
HEREBY DENIED.

s/ Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: All Registered ECF Counsel and Parties